

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF INQUIRY	§	GN DOCKET NO. 00-185
CONCERNING HIGH-SPEED ACCESS	§	
TO THE INTERNET OVER CABLE	§	
AND OTHER FACILITIES	§	
	§	
IN THE MATTER OF INTERNET	§	
OVER CABLE DECLARATORY	§	
RULING	§	
	§	
IN THE MATTER OF APPROPRIATE	§	CS DOCKET NO. 02-52
REGULATORY TREATMENT FOR	§	
BROADBAND ACCESS TO THE	§	
INTERNET OVER CABLE FACILITIES	§	

**REPLY COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL OF THE
STATE OF TEXAS**

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division and files these its reply comments on the Notice of Proposed Rulemaking released March 15Th, 2002 in FCC Order No. 02-77. These comments are timely filed pursuant to the Commission’s subsequent orders in DA 02-909 and DA 02-1595.

The Office of the Attorney General submits these comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas, the enforcer of state laws prohibiting anti-competitive acts and practices, and the enforcer of laws for the protection of consumers in Texas. We reply to commenters who have addressed the issues of consumer protection, open access, and state and local authority. The first two issues are, we believe, the grounding for the framework which must apply to all high-speed or advanced services

provided to consumers and, as such, should be addressed similarly, no matter what their legal classification under the FTA. The third issue is a blend of consumer protection and state sovereignty issues. We believe that the states and local governments are in the best position to provide truly responsive consumer protection to their citizens, no matter what their particular state regulatory structures may be. Requiring consumers to depend upon federal agencies to respond to all types of consumer complaints and inquiries is at best inefficient, and at worst, completely undermines any realistic level of protection or responsiveness which the law may technically afford. States and their localities also retain the duty and responsibility to protect their citizens and maintain the rights-of-way used by both primary types of providers, cable and telecommunications. We respond to specific comments as follows:

Consumer Federation of America, Texas Office of Public Utility Counsel, Consumers Union and Media Access Project

We agree with these commenters that the presence of information services in a bundle of services should not be used as an excuse to completely deregulate that bundle. Comments at page 8. The complexity of the bundling of information and telecommunications services should instead lead to the conclusion that a new regulatory paradigm is required to treat all services providing high speed information equivalently. As these commenters state, the Commission should develop a consistent means for implementing the telecommunications provider obligations of all providers of high speed broadband services, whether through cable modem or wireline. Comments at page 10.

People of the State of California and the California Public Utility Commission

A well-founded point of these commenters is that the adoption of an open access regime for cable modem services is essentially leveling the competitive playing field and providing consumers

with enhanced choices and therefore greater protection due to marketplace competition. Comments at page 3. True open access will provide far greater protection to consumers by allowing an abundance of competitive service offerings through both wireline and cable modem providers. In this manner, it is possible to develop a truly competitive and open marketplace.

State of New Jersey Board of Public Utilities

We support the comments of New Jersey that preemption of state authority would result in long distance management of consumer complaints about cable modem services. Comments at page 2. The proposed preemption would give cable modem service providers little reason to respond or cooperate with state or local authorities and would leave consumers with little recourse in matters which the FCC can not or will not address. As this commenter notes, consumer rights may be the most important area which should be left primarily to the states to regulate. Comments at page 3.

Alliance of Local Organizations Against Preemption

We agree with these commenters that local authorities should be left free to regulate public rights-of-way in traditional ways and that the protection of consumers in complaints about cable modem service should be left to state and local authorities, just as complaints about telecommunications services are dealt with at the state and local level. Comments at page 5. As we stated above, they are the entities best equipped to address consumer complaints on these matters. Additionally, localities are the only governmental entities in the position to deal with public safety issues arising from the use of public streets by the providers. Nothing should be done to impede their ability to deal with these issues under the controlling state laws.

United States Telecom Association

This association takes the position that both wireline broadband internet access and cable

modem service should receive the same regulatory treatment. While we agree with this statement in principle, we disagree on the minimum standards for this consistent regulatory structure. First, in order to be truly competitive and non-discriminatory, open access must apply equally to both types of providers, rather than eliminating open access for all and thus diminishing the competitive alternatives available. Second, because local and state governments are in the best position to handle consumer's interests, state consumer protections must continue to be available to all customers, regardless of the mode by which their service is provided. Federal law must not be interpreted in a way which would pre-empt this. We do agree with the association that, to the extent to which there is an obligation to provide support for universal service, it should be borne equally by all types of carriers, cable and wireline.

BellSouth, SBC Communications, Verizon

We address these three commenters simultaneously, as their comments are similar in many respects. We agree with all three that the regulatory treatment of wireline high speed service and cable modem service must be consistent and that universal service obligations should apply to all types of carriers or none to not have adverse effects upon the competitive marketplace. Where we disagree, and this is best expressed in the comments of Verizon beginning at page 10, is that a consistent regulatory environment does not mean a completely deregulated environment. Nor is permitting states to regulate these services inconsistent with uniform treatment, as long as the states are allowed the ability to regulate both types of services for purposes of protecting their citizens. The ability to regulate the use of state and local rights-of-way is fundamentally a part of this and to remove it would impinge upon state sovereignty.

The Office of the Attorney General of Texas appreciates this opportunity to provide

reply comments on this Notice of Proposed Rulemaking.

Respectfully submitted,

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